tered the tug as a Singapore vessel. The Plaintiff himself admitted that the true ownership of the said Shares had to be kept away from the Registrar of Singapore Ships in order to obtain registration. I am satisfied on the evidence that the Plaintiff had transferred the said Shares to the First Defendant in order that the Registrar of Singapore Ships would get a false picture. Although the First Defendant had alone signed the registration papers containing the false representation, it was all done with the knowledge and consent of the Plaintiff.

The Plaintiff is therefore confronted with the principle stated a long time ago by Lord Mansfield: "No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.": see *Holman* v. *Johnson*[1]. A similar situation had arisen in *Palaniappa Chettiar* v. *Arunasalam Chettiar*[2]. I have no doubt that the Plaintiff had practised a deception on the Registrar of Singapore Ships. To the Plaintiff, I have to say: "Let the said Shares lie where they fall".

It was submitted on behalf of the Plaintiff that the administrative guidelines of the Registrar of Singapore Ships were directly in conflict with the provisions of section 369 of the Merchant Shipping Act (Cap. 172), in their unamended form in February 1980. I do not need to comment on the validity or otherwise of the guidelines. Assuming that they were invalid, their invalidity was no justification for the Plaintiff to practise a deception on the public administration of Singapore. He ought to have pursued his remedies in a lawful manner.

Accordingly, I dismiss the Plaintiff's claims against both the Defendants with costs.

Claims dismissed.

Solicitors: *Mallal & Namazie; Chor Pee & Co.*

LIAN SOON SHIPPING & TRADING CO. (PTE.) LTD. v. PUBLIC PROSECUTOR

[A.C.J. (Wee Chong Jin C.J.) June 28, 1984]
[Singapore – Magistrate's Appeal No. 22 of 1983]

Labour Law – Employment – Central Provident Fund – Failure to contribute to – Whether "genuine pre-estimates of expenses" incurred by crew includes "Food allowance" – Central Provident Fund Act (Cap. 121), s.7(1).

The appellants were convicted on eight charges of failing to pay contributions to the Central Provident Fund in respect of eight employees of the company as required by section 7(1) of the Central Provident Fund Act. The appellants appealed against the said decision. They contended, *inter alia,* that the expression "remuneration" in the definition of "wages" under section 2 of the Central Provident Fund Act does not include fixed payments made to cover genuine pre-estimates of an expense of a particular type of employees and that in the present case the payments made to the bunkering crew were "genuine pre-estimates of expenses necessarily incurred by the crew".

Held, dismissing the appeal: (1) there is no substance in the above submission. No inference could be drawn from Clause 25(c) of the first Collective Agreement that the amounts of $90/- and $60/- were genuine pre-estimates of the expenses necessarily incurred by the employees of the company who were engaged as locally engaged bunkering employees;

(2) the trial judge was correct on the evidence before him in finding the appellant company guilty and the appeal must accordingly be dismissed.

MAGISTRATE'S APPEAL.

G. Pannirselvam for the appellants.

Spencer Gwee (Deputy Public Prosecutor) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellant company was convicted by a Magistrate's court on eight charges of failing to pay contributions to the Central Provident Fund in respect of eight employees of the company as required by section 7(1) of the Central Provident Fund Act ("the Act'). The company now appeals.

The undisputed facts are as follows. The eight employees named in the eight charges were locally engaged by the company on ships owned by the company which were engaged in the company's harbour trade of supplying bunkers for ships that come into Singapore territorial waters for bunkers. The nature of their employment required them to stay on board the vessel on which they worked for 24 hours at a stretch with alternate days off. Prior

to May 30, 1974 employees of the company who were engaged to work on board the company's vessels which supplied bunkers were provided with free meals on board. On May 30, 1974 the company entered into a Collective Agreement covering a period of two years from January 1, 1974 to December 31, 1975 with the Singapore Industrial Labour Union ("the Union"), a trade union registered under the Trade Union Act (Chapter 129) which covered all locally engaged bunkering employees of the company in Singapore with the exception of managerial, executive, confidential, probationary employees and any temporary employees engaged for a period not exceeding the aggregate of three months in any year. All the eight employees were members of the Union who came within the scope of the Collective Agreement and three subsequent Collective Agreements each of which covered a period of two calendar years. In each of the these Collective Agreements there is a Clause providing for the payment of a fixed monthly "food allowance" to such employees. The amount of the monthly food allowance depends on whether the employee is in the class of "Captain, 1st or 2nd Engine Driver, Bunkering Clerk" or in the class of "Serang; Quarter Master, Sailor or Greasor".

The defence, which was rejected by the Magistrate, was that the Company was not obliged under the Act to pay contributions in respect of such employees. It was contended that the "food allowances" paid to employees under the Collective Agreements are not "wages" within the meaning of that expression as defined in section 2 of the Act. The relevant provisions of the Act are section 2, section 7(1) and (2) and the Schedule to the Act, which, so far as material, read as follows:–

"2. In this Act, unless the context otherwise requires– 'wages' means the remuneration in money including any bonus, due or granted to a person in respect of his employment."

"7.-(1) Subject to section 39 and any regulations made under section 45, every employer of an employee shall pay to the Fund monthly in respect of each employee contributions at the appropriate rates set out in the Schedule to this Act except that the Board may in its discretion and on such terms and conditions as it may impose authorise an employer or a class or classes of employers to pay such contributions at other intervals not exceeding six months.

(2) Notwithstanding the provisions of any written law or any contract to the contrary, an employer shall be entitled to recover from the monthly wages of an employee the amount shown in the Schedule to this Act as so recoverable from the employee.

"THE SCHEDULE

1. Subject to paragraph 2 the contributions payable by the employer and the amount recoverable from the employee's wages are as follows:–

... ...

2. For the purpose of this Schedule –

... ...

(d) "ordinary wages for the month" means the amount of remuneration due or granted wholly and exclusively in respect of employment during that month and payable before the due date for the payment of conribution for that month;"

It was submitted on behalf of the appellant company that the expression "remuneration" in the definition of "wages" under section 2 of the Act does not include fixed payments made to cover genuine pre-estimates of an expense of a particular type of employees and that in the present case the payments made to the bunkering crew were "genuine pre-estimates of expenses necessarily incurred by the crew". In my opinion there is no substance in the appellant's submission. It is based on the contention that the amounts set out in the relevant clause in each of the four Collective Agreements are genuine pre-estimates of the expenses necessarily incurred by the category of employees specified in the Clause.

The defence called Ong Hock Khiow, a director of the company. He became a director in 1976 long after the first Collective Agreement which was made on May 30, 1974. When asked who actually took part in the negotiations with the Union his answer was:–

"My mother and partly my accountant who is no longer with us, my crew manager and occasionally myself."

The trial Magistrate's finding on this question of fact is contained in the following passage in his Grounds of Decision which reads:–

"There was no evidence before the Court as to what transpired at the negotiations between the defendant company and the union prior to the signing of the collective agreements. Neither the prosecution nor the defence called a representative from the union to testify as to what precisely transpired at the negotiation table. Even Ong Hock Khiow (DW1) could not testify conclusively on this question (see pages 58-59 of the Notes of Evidence). Unfortunately the Court will never know what precisely was in the minds of the negotiations when they agreed upon the various fixed meal allowances to be paid to the crew members."

Clause 25 of the first Collective Agreement

dated May 30, 1974 reads:–

"25. Allowance.– (a) All employees shall be entitled to a fixed monthly overtime allowance equivalent to fifty per cent (50%) of the individual basic salary per month.

(b) Employees who are requested to be on duty after their normal working hours shall be paid two (2) times of the employee's normal rate of pay per hour.

(c) The Company shall pay a food allowance to employees as follows:–

Captain 1st and 2nd Engine Driver Bunkering Clerk	$90 per month
Serang Quarter Master Sailor (Deck-hand) Greaser	$60 per month

It is clear that no inference can be drawn from Clause 25(c) itself or from the evidence of Ong Hock Khiow that the amounts of $90/- and $60/- were genuine pre-estimates of the expenses necessarily incurred by the employees of the company who were engaged as locally engaged bunkering employees.

In my opinion the trial judge was correct on the evidence before him in finding the appellant company guilty and the appeal must accordingly be dismissed.

Appeal dismissed.

Solicitors: *Drew & Napier.*

IN THE MATTER OF DREW & NAPIER STAFF RETIREMENT FUND.

[O.C.J. (Wee Chong Jin C.J.) June 28, 1984]
[Singapore – Originating Summons No. 210 of 1983]

Trust – Staff Retirement Fund – Fund "providing benefits for its members on retirement or death" – Fund lawfully dissolved – Question of distribution of Fund.

The firm of Drew & Napier, a firm of advocates and solicitors, established a fund called "Drew & Napier Staff Retirement Fund" on December 1, 1962. This was accompanied by "Rules of Drew & Napier Staff Retirement Fund". The said Rules provided, *inter alia,* for the appointment of Trustee of the Fund and for the assets of the Fund to be vested in the Trustees or in a Trust or Nominee Company approved by the Trustees.

The object of the Fund was to provide "benefits for its Members on retirement or death" (Rule 2).

Rule 23 of the Rules provided the Firm with power "to close and discontinue the Fund ..." and thereupon "pay ... to each member or to his order the amount found to be due to such member, having regard to the total value of the assets of the Fund including the Reserve Account and to the amount standing to the credit of each member with the Fund".

Apart from Rule 23, the Rules did not contain any provision for the method and quantum of distribution of the total net assets of the Fund among its members.

The Firm decided to dissolve the Fund with effect from January 1, 1983 and all the Trustees and members of the Fund had accepted that the Fund had been lawfully dissolved as of that date.

As at August 30, 1983, the amount standing to the credit of each individual member of the Fund had been paid into the member's Central Provident Fund and as at August 20, 1983 the Trustees had available for distribution among the members the sum of $854,885.00 less expenses in connection with the closing of the Fund. The issue before the Court was how the said sum of $854,885.00 less closing Fund expenses and any interest accrued thereafter was to be distributed among the members of the Fund.

Held: (1) Rule 23 on its true construction and having regard to the defined meaning of "member" in Rule 1 and the Rules as a whole, enjoins the Trustees to distribute the net assets of the Fund, arrived at after deducting the expenses incurred in connection with its dissolution and the amount standing to the credit of each member of the Fund among all the members of the Fund in proportion to the amount standing to the credit of each member irrespective of each member's number of years of service in the Firm;

(2) the costs of all parties must be paid out of the Fund.

ORIGINATING SUMMONS.

H. Elias for the applicants.
M. Karthigesu for "A" members.
T.P.B. Menon for "B" members.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The firm of Drew & Napier ("the Firm") is a firm of advocates and solicitors. On December 1, 1962 the Firm established a fund called "Drew & Napier Staff Retirement Fund" ("the Fund") by making rules called "Rules of Drew & Napier Staff Retirement Fund" ("the Rules"). The Rules provide, *inter alia,* for the appointment of Trustees of the Fund and for the assets of the Fund to be vested in the Trustees or in a Trust or Nominee Company approved by the Trustees. The Fund has been managed exclusively by the Hongkong Bank Trustee (Singapore) Limited, a Trust Company.